

Message Text

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TO AMCONSUL CALCUTTA PRIORITY

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SUBJECT: HARCOS/FLETCHER

REF: STATE 270844

1. ATTORNEYS BOUDIN AND DONOVAN MET WITH DEPARTMENT OFFICERS AND CONSUL GENERAL PICKERING AT THE REQUEST OF BOUDIN DECEMBER 9.

2. AT THE OUTSET, A DEPTOFF REPORTED THAT THE TRIAL WAS NOW SCHEDULED TO COMMENCE DECEMBER 16 AND THAT BHOSE HAD EXPRESSED THE HOPE THAT DONOVAN COULD ARRIVE ON OR ABOUT DECEMBER 13. DONOVAN STATED THAT SHE WAS SCHEDULED TO ARRIVE IN CALCUTTA AT 0845 HRS ON INDIAN AIRLINES DECEMBER 14. DEPTOFF ALSO REPORTED BHOSE'S UNWILLINGNESS TO MEET DONOVAN EXCEPT WITH THE COURT'S PERMISSION AND THEN ONLY IN THE COURT BUILDING.

3. BOUDIN INQUIRED ABOUT BHOSE'S PERSONAL LEGAL PROBLEMS RESULTING FROM THE SEIZURE OF HIS DOCUMENTS DURING A LIMITED OFFICIAL USE

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SEARCH OF HIS LUGGAGE PRIOR TO HIS RECENT TRIP TO LONDON.

DEPARTMENT OFFICERS EXPLAINED THAT THE INDIAN AUTHORITIES HAD SEIZED SOME DOCUMENTS BHOSE WAS NOT SUPPOSED TO HAVE REMOVED FROM THE COURT AND PICKERING CONFIRMED THAT SOME INDIAN AUTHORITIES HAD INDICATED THAT THEY HAD ENOUGH EVIDENCE TO PROCEED AGAINST BHOSE UNDER THE OFFICIAL SECRETS ACT. HOWEVER, DEPARTMENT OFFICERS EXPLAINED THAT

BHOSE'S ABILITY TO APPEAR IN THE TRIAL COMMENCING DECEMBER ,6 PROBABLY INDICATED THAT THE AUTHORITIES HAD DECIDED NOT TO PROSECUTE HIM AT LEAST FOR THE TIME BEING.

4. A DISCUSSION FOLLOWED ON THE DESIRABILITY OF DONOVAN PROCEEDING TO CALCUTTA AT THIS TIME SINCE BHOSE WAS RELUCTANT TO MEET HER PRIVATELY AND SHE PROBABLY WOULD NOT BE PERMITTED IN THE COURT ROOM. PICKERING MENTIONED THE USG'S OWN DIFFICULTIES WITH ACCESS TO HARCOS AND FLETCHER LAST SPRING AND WONDERED IF IT MIGHT NOT BE PREFERABLE FOR DONOVAN TO CLARIFY HER ABILITY TO ATTEND THE TRIAL AND MEET PRIVATELY WITH BHOSE BEFORE SHE MADE THE COSTLY TRIP. OTHER DEPARTMENT OFFICERS STATED THAT THE ONLY CLEAR REASON FOR THE VISIT SEEMED TO BE THE DEFENDANTS' STRONG DESIRE FOR THE REASSURING PRESENCE OF AN AMERICAN LAWYER.

5. DONOVAN REPORTED THAT SHE HAD ACHIEVED ACCESS TO THE DEFENDANTS DURING HER LAST VISIT IN FEBRUARY AND THOUGHT SHE MIGHT BE ABLE TO TALK HER WAY INTO ANOTHER MEETING AND PERHAPS THE TRIAL. SHE ALSO MENTIONED THE POSSIBILITY OF SEEKING A COURT ORDER PERMITTING HER TO DO THIS. DONOVAN SAID THAT ANOTHER PURPOSE OF THE VISIT WOULD BE TO SPUR BHOSE AND DUDHEWALA TO GREATER EFFORTS IN THEIR CLIENTS' BEHALF WHICH SHE THOUGHT HAD BEEN AN EFFECT OF HER EARLIER TRIP. DEPTOFF AGREED THAT UNDER THE CIRCUMSTANCES, CANCELLATION OF DONOVAN'S TRIP COULD BE MISINTERPRETED BY LOCAL COUNSEL AS A SIGN OF DECREASED INTEREST IN THE CASE.

6. RESPONDING TO A QUESTION, DONOVAN DISCLOSED THAT ELDON JOHNSON, A HARCOS FAMILY MEMBER HAD PAID A PORTION OF THE EXPENSES FOR THE UPCOMING TRIP BUT HAD NOT "RETAINED" HER FOR FUTURE SERVICES AT THIS TIME. BOUDIN SAID THIS LIMITED OFFICIAL USE

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WAS CLEARLY AN EFFORT BY JOHNSON TO LIMIT HIS FUTURE FINANCIAL OBLIGATIONS TO DONOVAN. DEPTOFF REPORTED ON CONVERSATIONS WITH JOHNSON AND JOHNSON'S DEMAND FOR A THOROUGH ACCOUNTING OF FUNDS DISBURSED LOCAL COUNSEL.

7. IN RESPONSE TO BOUDIN'S QUESTION, PICKERING REPORTED THAT THE POLITICAL OFFICIALS IN WEST BENGAL TENDED TO ACCEPT HARCOS' AND FLETCHER'S CLAIM THAT THEY HAD BEEN

ENGAGED SOLELY IN DRUG SMUGGLING. BOUDIN INQUIRED WHETHER POLITICAL OFFICIALS POSSESSED THE AUTHORITY OR THE WILL TO EFFECT A DISPOSITION OF THE CASE THROUGH A PLEA OF GUILTY TO DRUG SMUGGLING CHARGES. PICKERING SAID HE BELIEVED THEY HAD THE AUTHORITY BUT IT WAS DIFFICULT TO PREDICT HOW THEY MIGHT ACT. REPLYING TO BOUDIN'S ASKING WHAT MIGHT BAR THEM FROM ACCEPTING SUCH A PLEA, PICKERING ADDED THAT THE WEST BENGAL POLITICAL OFFICIALS AND THE

PROSECUTION OFFICERS SEEMED PREOCCUPIED WITH THE CONCERN THAT THEY MIGHT SOMEDAY BE PILLORIED FOR "LENIENCY TOWARD TWO AMERICAN SPIES." RESPONDING TO A RELATED QUESTION, PICKERING STATED THAT HARCOS AND FLETCHER SEEMED TO HAVE BROUGHT ON MANY OF THEIR TROUBLES BY REFUSING FOR OVER A YEAR TO PROFFER ANY EXPLANATION FOR THEIR ACTIVITIES AT CALCUTTA HARBOR. THEIR RECENT REVELATIONS OF THEIR ALLEGED DRUG SMUGGLING EFFORTS APPEARED TO CHECK OUT SINCE AMONG OTHER THINGS THE SHIP TO WHICH THEY ALLEGEDLY ATTACHED THE DRUGS HAD BEEN FOUND TO HAVE BEEN IN THE HARBOR AT THAT TIME AND TO HAVE LEFT THE FOLLOWING MORNING FOR SAN FRANCISCO. RESPONDING TO A QUESTION PICKERING SAID HE UNDERSTOOD MAXIMUM SENTENCES UNDER THE OFFICIAL SECRETS ACT TO BE 14 YEARS WHILE SENTENCES FOR DRUG SMUGGLING WERE CONSIDERABLY LESS.

8. BOUDIN ASKED WHETHER THERE WAS ANY REASONABLE POSSIBILITY THAT HARCOS AND FLETCHER MIGHT BE EXPELLED FROM INDIA IF THEIR PLEA OF GUILTY TO DRUG SMUGGLING WERE ACCEPTED. PICKERING SAID HE THOUGHT THE INDIAN AUTHORITIES MIGHT WELL BE INTERESTED IN EXPELLING THE TWO MEN IF THE ESPIONAGE ALLEGATIONS WERE DROPPED OR NOT PROVEN, PARTICULARLY SINCE THE MEN HAVE BEEN INCARCERATED FOR NEARLY 20 MONTHS ALREADY.
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9. DONOVAN SAID THAT SHE HAD DISCUSSED WITH HARCOS' FAMILY THE POSSIBILITY OF HARCOS ALSO RETAINING BHOSE AND LETTING DUDHEWALA GO. SHE HAD FELT THAT IF THE TWO MEN WERE TRIED UNDER THE OFFICIAL SECRETS ACT, THEY WOULD NEED DIFFERENT COUNSEL SINCE THE FACTUAL SITUATION WAS FAR MORE UNFAVORABLE TO HARCOS. HOWEVER, IF THEY SUCCESSFULLY PLEADED GUILTY TO THE DRUG OFFENSE, BHOSE OR ANOTHER LAWYER COULD ADEQUATELY REPRESENT BOTH AT SOME COST SAVINGS. IN RESPONSE TO A QUESTION, PICKERING SAID THAT BHOSE APPEARED TO HAVE MORE ABILITY AND EXPERIENCE THAN DUDHEWALA BUT THAT BANERJEE WAS CLEARLY HEAD AND SHOULDERS OVER BOTH, ESPECIALLY IN TERMS OF PRESTIGE.

10. BOUDIN THEN SAID THAT HE FORESAW A THREE-PRONGED APPROACH TO POLITICAL OFFICIALS, THE BENCH AND THE PROSECUTION TO WIN PERMISSION FOR HARCOS AND FLETCHER TO PLEAD GUILTY TO DRUG SMUGGLING. HE STATED HIS HOPE THAT THE CONSULATE GENERAL MIGHT SUPPORT THIS INITIATIVE THROUGH DEMARCHES AT THE POLITICAL LEVEL. PICKERING SAID THAT HE WOULD KEEP GOWB OFFICIALS INFORMED OF ANY PLEA BARGAINING EFFORTS. HOWEVER, A DEMARCHE SUCH AS BOUDIN FORESAW COULD BE MADE ONLY ON INSTRUCTIONS FROM THE DEPARTMENT. DEPTOFFS SAID THE

USG WOULD BE RELUCTANT TO BECOME SO CLOSELY INVOLVED IN THE DEFENSE OF THE CASE AND EXPLAINED THAT THE DEPARTMENT'S LEGITIMATE CONCERN WAS NOT THE GUILT OR INNOCENCE OF DETAINED AMERICANS BUT THEIR EQUITABLE TREATMENT UNDER FOREIGN JUDICIAL SYSTEMS. BOUDIN SAID HE UNDERSTOOD THIS BUT THOUGHT THE USG MIGHT SEE DISPOSAL OF THE HARCOS-FLETCHER CASE AS REMOVAL OF AN UNNECESSARY IRRITANT IN U.S.-INDIAN RELATIONS. DEPTOFF SAID THE DEPARTMENT HAD NOTED BOUDIN'S REQUEST AND WOULD TAKE IT UNDER ADVISEMENT.

11. BOUDIN STATED THAT WHILE IN INDIA, DONOVAN WOULD TRY TO SEE AS MANY PEOPLE AS SHE COULD SEE IN AN EFFORT TO AVOID A COSTLY, UNDESIRABLE AND PROTRACTED TRIAL UNDER THE OFFICIAL SECRETS ACT. THE DEPARTMENT LIMITED OFFICIAL USE

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OFFICERS AND PICKERING EXPRESSED THE HOPE THAT SHE WOULD KEEP IN CLOSE TOUCH WITH THE CONSULATE GENERAL.

12. BOUDIN REPORTED THAT HE HAD BECOME INVOLVED IN THE CASE THROUGH A FRIEND WHO KNEW MRS. FLETCHER AND HER SAD FINANCIAL PLIGHT. BOUDIN ALSO NOTED FLETCHER'S GRANDFATHER WAS A TRADE UNIONIST AT THE TIME BOUDIN WAS A YOUNG TRADE UNION LAWYER AND THE TWO FAMILIES HAD BEEN IN TOUCH EVER SINCE. BOUDIN SAID THAT HE FORESAW NO FEES FOR HIMSELF AND THAT DONOVAN WAS CHARGING A SEVERELY REDUCED RATE. HE NOTED THAT CONTINUED PAYMENT OF BRIBES TO INDIAN COUNSEL WOULD REMAIN ESSENTIAL.

13. IN A DISCUSSION REGARDING THE SMUGGLING METHOD ALLEGEDLY EMPLOYED, DONOVAN NOTED THAT BELA HARCOS HAD BEEN EXTREMELY UNCOMMUNICATIVE ABOUT THE CASE WHEN SHE HAD APPROACHED HIM. BOUDIN ASSERTED THAT HARCOS OR FLETCHER COULD NOT BE FORCED TO REPEAT ANY CONFESSIONS THEY MIGHT MAKE SHOULD U.S. AUTHORITIES DESIRE TO INSTITUTE A CASE AGAINST THEM OR BELA HARCOS HERE. INGERSOLL

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